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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**HALL OF FAME SPORTS  
MEMORABILIA, INC.,**

*Plaintiff,*

**v.**

**NBA PROPERTIES, INC.,**

*Defendant.*

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**Civil Action No. 1:19-cv-19176-RMB-JS**

**PLAINTIFF'S ANSWER TO DEFENDANT'S COUNTERCLAIMS**

Plaintiff Hall of Fame Sports Memorabilia, Inc. ("HOFSM" or "Plaintiff"), by and through its undersigned counsel, hereby responds to the Counterclaims asserted by Defendant NBA Properties, Inc. ("NBA Properties" or "Defendant") as follows:

1. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 1 of the Counterclaims, and those allegations are accordingly deemed denied.

2. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 2 of the Counterclaims, and those allegations are accordingly deemed denied.

3. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 3 of the Counterclaims, and those allegations are accordingly deemed denied.

4. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 4 of the Counterclaims, and those allegations are accordingly deemed denied.

5. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 5 of the Counterclaims, and those allegations are accordingly deemed denied.

6. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 6 of the Counterclaims, and those allegations are accordingly deemed denied.

7. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 7 of the Counterclaims, and those allegations are accordingly deemed denied.

8. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 8 of the Counterclaims, and those allegations are accordingly deemed denied.

9. HOFSM denies that it sells, or has ever sold, merchandise using identical and confusingly similar imitations of the NBA Jersey Trade Dress without the permission or authorization of the National Basketball Association (“NBA”) or NBA Properties (collectively, “NBA”). HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the

remaining allegations set forth in paragraph 9 of the Counterclaims, and those allegations are accordingly deemed denied.

10. HOFSM admits only that it sells a variety of sports memorabilia products including, among other things, both licensed NBA merchandise and custom basketball jerseys that do not display any NBA logos, team names or other registered or protectable trademarks or trade dress. HOFSM further admits that paragraph 10 of the Counterclaims appears to show an image of an HOFSM custom jersey, and that Exhibit 3 to the Counterclaims appears to show screenshot images of HOFSM custom jersey listings posted on HOFSM's website. The images speak for themselves, and Defendant's characterizations thereof need not be admitted or denied. HOFSM lacks sufficient knowledge or information to admit or deny that the other image shown in paragraph 10 of the Counterclaims is an image of "NBA Jersey Trade Dress" as alleged, and those allegations are accordingly deemed denied. HOFSM denies the remaining allegations set forth in paragraph 10 of the Counterclaims.

11. Denied.

12. HOFSM admits only that the images shown in paragraph 12 of the Counterclaims appear to be screenshots of listings from the HOFSM website. The listings speak for themselves, and Defendant's characterizations thereof need not be admitted or denied. HOFSM denies the remaining allegations set forth in paragraph 12 of the Counterclaims.

13. HOFSM admits only that the image in paragraph 13 of the Counterclaims appears to show a framed jersey with photographs offered for sale by HOFSM, and that Exhibit 4 of the Counterclaims appears to show screenshots of listings from the HOFSM website. The images speak for themselves, and Defendant's characterizations thereof need not be admitted or denied. HOFSM denies the remaining allegations set forth in paragraph 13 of the Counterclaims.

14. Denied.

15. The allegations set forth in paragraph 15 of the Counterclaims are Defendant's characterizations of its Counterclaims and the relief that Defendant purports to seek, which need not be admitted or denied. By way of further response, HOFSM denies that there is merit to the Counterclaims and denies that Defendant is entitled to any relief.

16. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 16 of the Counterclaims, and those allegations are accordingly deemed denied.

17. Admitted.

18. The allegations set forth in paragraph 18 of the Counterclaims are conclusions of law that need not be admitted or denied.

19. HOFSM admits the allegations set forth in the second sentence of paragraph 19 of the Counterclaims. The remaining allegations set forth in paragraph 19 of the Counterclaims are conclusions of law that need not be admitted or denied.

20. HOFSM admits that it resides in and does business in this District. The remaining allegations set forth in paragraph 20 of the Counterclaims are conclusions of law that need not be admitted or denied.

21. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 21 of the Counterclaims, and those allegations are accordingly deemed denied.

22. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 22 of the Counterclaims, and those allegations are accordingly deemed denied.

23. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 23 of the Counterclaims, and those allegations are accordingly deemed denied.

24. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 24 of the Counterclaims, and those allegations are accordingly deemed denied.

25. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 25 of the Counterclaims, and those allegations are accordingly deemed denied.

26. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 26 of the Counterclaims, and those allegations are accordingly deemed denied.

27. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 27 of the Counterclaims, and those allegations are accordingly deemed denied.

28. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 28 of the Counterclaims, and those allegations are accordingly deemed denied.

29. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 29 of the Counterclaims, and those allegations are accordingly deemed denied.

30. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 30 of the Counterclaims, and those allegations are accordingly deemed denied.

31. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 31 of the Counterclaims, and those allegations are accordingly deemed denied.

32. HOFSM denies that it offers for sale or sells “knock off jerseys” on eBay or otherwise, and further denies that it trades, or has an “obvious goal of trading,” on any goodwill the NBA may have in its protectable trademarks and trade dress. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 32 of the Counterclaims, and those allegations are accordingly deemed denied.

33. Denied.

34. HOFSM admits only that it sells its products on its website, <https://www.hofsm.com/>, and through online retailers such as eBay and Amazon. HOFSM denies the remaining allegations set forth in paragraph 34 of the Counterclaims.

35. HOFSM admits only that the image shown in paragraph 35 of the Counterclaims appears to be a screenshot taken from the HOFSM website. The image speaks for itself, and Defendant’s characterizations thereof need not be admitted or denied. HOFSM denies the remaining allegations set forth in paragraph 35 of the Counterclaims.

36. HOFSM admits only that it sells signed, unsigned and signed/framed custom jerseys (among a wide range of other sports memorabilia), and that the images shown in paragraph 36 of the Counterclaims appear to be images of products sold by HOFSM. The images speak for

themselves, and Defendant's characterizations thereof need not be admitted or denied. HOFSM denies the remaining allegations set forth in paragraph 36 of the Counterclaims.

37. HOFSM admits only that the images in paragraph 37 of the Counterclaims represented to be "HOFSM Jersey[s]" appear to be images of products sold by HOFSM. Those images speak for themselves, and Defendant's characterizations thereof need not be admitted or denied. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 37 of the Counterclaims regarding the images represented to be "NBA Jersey Trade Dress," and those allegations are accordingly deemed denied. HOFSM denies the remaining allegations set forth in paragraph 37 of the Counterclaims.

38. HOFSM admits only that the images in paragraph 38 of the Counterclaims represented to be "HOFSM Jersey[s]" appear to be images of products sold by HOFSM. Those images speak for themselves, and Defendant's characterizations thereof need not be admitted or denied. HOFSM lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 38 of the Counterclaims regarding the images represented to be "NBA Jersey Trade Dress," and those allegations are accordingly deemed denied. HOFSM denies the remaining allegations set forth in paragraph 38 of the Counterclaims.

39. HOFSM admits only that the images in paragraph 39 of the Counterclaims appear to be images of products sold by HOFSM. Those images speak for themselves, and Defendant's characterizations thereof need not be admitted or denied. HOFSM denies the remaining allegations set forth in paragraph 39 of the Counterclaims.

40. HOFSM admits only that the images in paragraph 40 of the Counterclaims appear to be images of products sold by HOFSM. Those images speak for themselves, and Defendant's

characterizations thereof need not be admitted or denied. HOFSM denies the remaining allegations set forth in paragraph 40 of the Counterclaims.

41. HOFSM admits only that the image in paragraph 41 of the Counterclaims appears to be a screenshot of a portion of a web page from HOFSM's website. That image speaks for itself, and Defendant's characterizations thereof need not be admitted or denied. HOFSM denies the remaining allegations set forth in paragraph 41 of the Counterclaims.

42. HOFSM admits only that the images in paragraph 42 of the Counterclaims appear to be images of social media posts from HOFSM, and that Exhibit 5 to the Counterclaims appears to show snapshots of HOFSM social media posts. Those images speak for themselves, and Defendant's characterizations thereof need not be admitted or denied. HOFSM denies the remaining allegations set forth in paragraph 42 of the Counterclaims.

43. HOFSM admits only that the images in paragraph 43 of the Counterclaims appear to be images of products, and portions of products, offered for sale and sold by HOFSM. Those images speak for themselves, and Defendant's characterizations thereof need not be admitted or denied. HOFSM denies the remaining allegations set forth in paragraph 43 of the Counterclaims.

44. HOFSM admits only that it offers for sale and sells some of its custom jerseys in a frame with a plaque. HOFSM denies the remaining allegations set forth in paragraph 44 of the Counterclaims.

45. Denied.

46. Denied.

47. Denied.



**COUNT I**

48. HOFSM restates and incorporates herein by reference its response to paragraphs 1 through 47 of the Counterclaims.

49. Denied.

50. Denied.

51. Denied.

**COUNT II**

52. HOFSM restates and incorporates herein by reference its response to paragraphs 1 through 51 of the Counterclaims.

53. Denied.

54. Denied.

55. Denied.

**COUNT III**

56. HOFSM restates and incorporates herein by reference its response to paragraphs 1 through 55 of the Counterclaims.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

**AFFIRMATIVE DEFENSES**

HOFSM reserves the right to supplement or amend this Answer, including to assert any additional affirmative defenses as may be disclosed during the course of additional investigation

and discovery. HOFSM denies all allegations in Defendant's Counterclaims not expressly admitted above.

**FIRST AFFIRMATIVE DEFENSE**

Defendant is barred from relief because it has failed to state a claim as to which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Defendant is barred from relief because it has not asserted a claim for relief from infringement of any protectable trademark or trade dress owned by Defendant.

**THIRD AFFIRMATIVE DEFENSE**

Defendant is barred from relief under the doctrines of laches, unclean hands and/or equitable estoppel.

**FOURTH AFFIRMATIVE DEFENSE**

Defendant is barred from relief because it cannot establish that HOFSM directly or proximately caused any of the harm allegedly suffered by Defendant. To the extent Defendant has suffered any harm, any such harm is attributable to one or more third parties who are not under HOFSM's control.

**PRAYER FOR RELIEF**

WHEREFORE, HOFSM denies that Defendant is entitled to any relief, including but not limited to the relief it requests in its Prayer for Relief, and respectfully requests that the Court:

- (a) Enter an order dismissing Defendant's Counterclaims with prejudice;
- (b) Award HOFSM its costs and fees in this action to the extent permitted by law; and

(c) Enter such other and further relief as this Court may deem proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), HOFSM demands a trial by jury on all claims so triable of right.

Dated: February 6, 2020

/s/ Tracy Zurzolo Quinn

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*Attorney for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of February 2020, a copy of the foregoing was served upon all counsel of record via CM/ECF.

/s/ Tracy Zurzolo Quinn  
Tracy Zurzolo Quinn